SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 344

HUBERT WORK, AS SECRETARY OF THE INTERIOR, PETITIONER

vs.

ROBERT L. BRAFFET, ADMINISTRATOR OF THE ESTATE OF MARK P. BRAFFET, DECEASED

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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1 [Caption omitted.]

In Supreme Court of the Distruct of Columbia

In equity. No. 42382

MARK P. BRAFFET, PLAINTIFF

vs.

HUBERT WORK, AS SECRETARY OF THE INTERIOR, DEFENDANT

Amended bill of complaint

Filed June 12, 1924

To the Supreme Court of the District of Columbia:

Comes now the above-named plaintiff, and for this amended bill of complaint, consent of the court first being had, complains herein against the defendant as follows:

I

That said plaintiff is a citizen of the United States and a citizen of and resident in the State of Utah; that at all times herein mentioned he was upwards of twenty-one years of age and was and still is qualified in all repects to purchase known coal lands of the United States, pursuant to law in relation thereto; that he brings this suit in his own right and not otherwise.

II

That the above-named defendant is the duly appointed, qualified, and acting Secretary of the Interior, and temporarily a resident in the District of Columbia, and is sued herein in his representative capacity and not otherwise.

III

That at the United States land office at the city of Salt Lake, in the State of Utah, and on February 4, 1918, this plaintiff filed
2 in said land office his application under the provisions of section 2347, U. S. Revised Statutes, to purchase the following-described known coal lands, and known as such on the date of the admission of the State of Utah, which were a part of the public lands of the United States and then subject to purchase by this plaintiff, and not otherwise appropriated or reserved under the laws of the United States, situate in the State of Utah and county of Carbon, and more particularly described as follows, namely: SE ¼ of sec. 32, township 12 S., range 10 E., S. L. M., and thereupon and at the

same time paid to the register and receiver thereof the fees required by law therefor and received thereupon their receipt therefor; that said application is serial No. 022470, and subsequently there was endorsed thereon, pursuant to the order and direction of the Department of the Interior, the following directions and words, namely: "Suspended pending disposition of contest 3655."

IV

That thereupon the said register and receiver, and on the 25th day of July, 1918, directed a notice of publication of said application, and thereupon a publication thereof was had in a newspaper as directed, published in the vicinity of said lands, and which, amongst other things, directed all persons to file any and all objections they may have had to the said application on or before the expiration of thirty days from the 25th day of July, 1918, and thereon notice of said application was given to the State of Utah.

V

That on the 13th day of August, 1918, the State of Utah intervened in said application, proceeding on the ground that the title to said lands had passed to said State by reason of the school-land grant to said State contained in the Utah enabling act of date of January 4, 1896; and about the same time the Pleasant Valley Coal Company, a corporation created and existing pursuant to the laws of Utah, and whose major stock was then owned by the Utah Fuel Company, a corporation created and existing pursuant to the laws of New Jersey, and whose major stock was then owned by the Denver and Rio Grande Railroad Company, a railroad corporation, also intervened in said application on the ground that it claimed title in fee under and through a patent from said State of Utah for said lands, and that said lands were agricultural only in character and claimed by the said State of Utah under its enabling act.

VI

That on or about the 25th day of July, 1918, the said register and receiver approved said application and subsequently directed said plaintiff to complete his purchase by payment within fifteen days thereafter at the price designated in the classifiecation price thereof; but before the expiration of said period, by order of the Department of the Interior therein, said payment therein was suspended and deferred until the determination of the contest by said department, all of which more fully appears hereinafter.

3 VII

That in said proceedings it was determined that said lands were known coal lands at the date of the admission of Utah into the Union of the States, on and prior to January 4, 1896.

VIII

That on the 18th day of February, 1920, after a hearing in the local land office arising under said contest by the State of Utah and said Pleasant Valley Coal Company, the application of plaintiff was dismissed, and thereupon plaintiff appealed therefrom, and within thirty days thereafter, to the Commissioner of the General Land Office, and in the proceeding therein on appeal the action of said local land office was wholly reversed and direction made therein that plaintiff be allowed to complete his purchase of said known coal lands.

IX

That thereupon the said contestants appealed from said order to the Secretary of the Interior, and in proceedings had therein and on the 31st day of July, 1922, an order was made remanding said proceeding to said local office to permit said State of Utah to offer additional proofs therein and directing the Government to formally intervene therein.

X

That thereafter and without notice to the plaintiff, and without his knowledge, privity, or consent, the said State of Utah filed with the said register and receiver in said local land office and in said appeal proceeding its abandonment of said contest and of any claim on its part of any title in or to said lands, and admitting said lands were known coal lands at the date of the admission of Utah into the Union of States; and thereupon the Pleasant Valley Coal Company did likewise; and thereupon and without notice to plaintiff, and without his knowledge, privity, or consent, and on the 8th day of January, 1924, and on representations and statements made to the Secretary of the Interior by the officers, agents, and attorneys of said State of Utah and Pleasant Valley Coal Company, and of which plaintiff had no knowledge or notice, and wholly without notice to or knowledge, privity, or consent of plaintiff, the Secretary of the Interior closed said proceedings without notice to plaintiff before or since.

XI

That all of said section 32 was excepted from the school land grant to Utah, the same being known coal lands at the date of the grant, and Utah had no right, title, or interest, or presumptive title therein or to any part thereof, and no legal, equitable, or presumptive title passed to Utah thereby or thereunder to said section 32 or to any part thereof; but the same remained a part of the public domain of the United States and subject to mineral entry and to purchase under the coal laws of the United States by plaintiff and said applicants.

4

XII

That heretofore and after learning for the first time of the closing of the said proceeding, as aforesaid, and on the 15th day of March, 1924, plaintiff made application to the Department of the Interior to reopen said proceedings, but on the 24th day of March, 1924, said application was denied, and plaintiff has fully exhausted the procedure of said Department of the Interior in the establishment of his rights and claim and has no further remedy or procedure therein and has no adequate remedy at law.

XIII

That heretofore and on the 4th day of February, 1918, one Agnus J. Mullings made similar application to purchase S. ½ NW. ¼, E. ½ SW. ¼, sec. 32, township 12 S., range 10 E., S. L. M.; as did also one Robert J. Turner to purchase NE. ¼ id.; and as did also one John H. Woodmansee to purchase N. ½ NW. ¼ id.; and on the 9th day of October, 1919, one Robert W. Hopkins made application to purchase W. ½ SW. ¼ id. in the same manner as did the plaintiff, as aforesaid; and similar publications, proceedings, and contests following said respective applications by the same said parties, the State of Utah and Pleasant Valley Coal Company, it was agreed and stipulated by the said parties, and which stipulation was agreed to by the Department of the Interior, that the disposition of the same should abide the final disposition of the said proceeding of the plaintiff.

Therefore plaintiff prays, amongst other things, that similar action be had herein based on said stipulations, so that a multiplicity of suits concerning the same subject matter may be avoided, or that they be included as defendants herein, in that their several rights under their several applications to purchase the said designated lands be determined and adjudicated in this suit, or that they be severally permitted to intervene herein, for adjudication and determination of their respective rights arising under their said respective applications to purchase as aforesaid; and it is further alleged applicants were severally qualified in every respect to make and perfect their said respective applications; that said respective applicants have no adequate remedy at law.

XIV

That at the time of said application of plaintiff the said lands had been divided into legal subdivisions under an approved survey by the United States and had been classified by the United States as known coal land.

XV

That at the time of plaintiff's said application and ever since the plaintiff was and now is ready, able, and willing to complete his said

purchase and to pay the classified price thereof, which is the reasonable value thereof.

5

XVI

That subsequent to the closing of said contest and dismissal of said proceeding, as aforesaid, plaintiff basing his application on the said proceedings of the State of Utah, the Pleasant Valley Coal Company, in withdrawing from said contest proceeding, and the Secretary defendant, as aforesaid, and setting forth the same in extenso, moved to reopen his said proceeding, but said Secretary defendant denied said application, and plaintiff is now without remedy therein, having fully exhausted the procedure, rules, and regulations of the Department of the Interior in such instance and in the establishment and maintenance of his rights therein.

Wherefore plaintiff prays that a writ of subpœna issue directed to said Secretary defendant, requiring him to appear herein and answer the exigencies of this bill of complaint; that a mandatory injunction issue against the defendant Secretary, directing that the decision of the Department of the Interior of July 31, 1922, be vacated, and that the prior said decision of the Commissioner of the General Land Office be affirmed in all respects, and that it be further adjudicated and decreed that the said application of plaintiff was valid, and that he be permitted by the defendant Secretary to complete his purchase of said lands in the manner provided by law, and thereupon that a patent shall issue to plaintiff therefor.

That plaintiff may have such other and further relief as may be just and equitable.

HENRY R. HARRIMAN,
EDMUND BURKE,
Attorneys for Plaintiff.

[Duly sworn to by Edmund Burke; jurat omitted in printing.]

In Supreme Court of District of Columbia

Stipulation as to action in cases Nos. 42421, 42422, 42423, and 42424

Filed April 25, 1924

* * * * * * *

It is hereby stipulated by and between the attorneys for the above-named parties that the above-entitled actions abide the determination by this court of the issues in the suit in equity, No. 42382,

6 wherein Mark P. Braffet is plaintiff and Hubert Work, as Secretary of the Interior, is defendant.

Dated April 7, 1924.

EDMUND BURKE,
HENRY R. HARRIMAN,
Attorneys for Plaintiffs.
C. EDWARD WRIGHT,
Attorney for Defendant.

In Supreme Court of District of Columbia

Answer

Filed June 9, 1924

* * * * * * *

The defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies of the plaintiff's bill of complaint in the above-entitled suit, and especially saving and reserving all benefit and advantage from those matters hereinafter set forth as grounds for the dismissal of said bill, for answer to said bill or so much thereof as he is advised is material, says:

1. He admits the averments of paragraph 1.

2. He admits the averments of paragraph 2.

3. He admits that on February 4, 1918, at the United States land office at Salt Lake City, Utah, plaintiff filed application under Revised Statutes, section 2347, to purchase the SE. ¼ of sec. 32, T. 12, S., R. 10 E., S. L. M., as coal land of the United States, that he paid a filing fee of $10 therefor, that said application was given serial number 022470, and that subsequently the application was indorsed as averred in said paragraph; but he further says that by act of Congress approved July 16, 1894, sec. 32 of every township in the State of Utah was granted to said State for school purposes; that the aforesaid section had been officially surveyed prior to the admission of Utah into the Union and was returned as nonmineral in character; that on July 3, 1907, the General Land Office classified said land, as of that date, as coal land, which classification was in force at the time of plaintiff's said application; that at the date of filing said application, however, it had never been determined that the land was of known mineral character at the date when the said school-land grant to the State of Utah attached; that said State claimed that it took title to each granted school section whether the same was mineral or nonmineral; that for some years prior to plaintiff's application the validity of said claim, to wit, that the State took title to granted sections regardless of mineral character, had been in litigation (United States v. Sweet, 245 U. S. 563), the ultimate decision of the Supreme Court being that it did not so take title to land known to be mineral at the time when the State's rights otherwise would have attached; that pending said litigation, and on November 10, 1915, the Secretary of the Interior had suspended the functions of local land officers, including the land officers of the said Salt Lake City land office, affecting coal-land applications for lands included in school sections, and had directed said officers to receive and

7 transmit all applications to enter, based on alleged mineral character of land, to the General Land Office until further directed; that said instructions were in full force and effect on February 4, 1918, and until June 13, 1918, and that during said period

said officers had no authority to take any action on any such application other than simply to receive and transmit the same to the General Land Office; that the State of Utah long prior to the filing of said application by the plaintiff claimed the land in controversy under its school-land grant and had actually sold said land in 1902 to a party, the grantor of the Pleasant Valley Coal Company, hereinafter mentioned, all of which was then and there well known to the plaintiff; that the defendant is informed and believes and therefore avers that in the year 1902 plaintiff was the attorney for the said Pleasant Valley Coal Company and so continued to be until the year 1917, much of said period being either general attorney or general solicitor of said company and occupying offices with said company; that during said relation of attorney and client plaintiff well knew of the asserted claim of title to said land by said company and of its deraignment from the said State of Utah; that the land, at the time of filing said application, was not vacant coal land of the United States not otherwise appropriated or reserved by competent authority and was not subject to entry under the provisions of Revised Statutes, section 2347; that the land having been returned as nonmineral in character, title had presumably passed to the State of Utah upon its admission as a State and was in the State unless and until, after proper proceeding and due process of law, it had been found and determined that the land was actually known to be mineral in character at the time when the State's title, if at all, attached; that the filing by plaintiff of his said application to purchase said land constituted in effect but an application to contest the presumed title of said State, and it was so treated; and that the said application was not subject to acceptance and allowance unless and until it should be determined, as aforesaid, that said land was in fact known to be mineral in character at the date of the admission of Utah into the Union.

4. Answering the averments of paragraph 4, he admits the same and alleges that the said notice was published in the Helper Times, a newspaper of general circulation published near said land, for five consecutive weeks, beginning August 2 and ending August 30, 1918, a like notice being posted in the said Salt Lake City land office.

5. Answering the averments of paragraph 5, he says that on or about August 13, 1918, the State of Utah, claiming title to said land as aforesaid, filed a protest against the allowance of plaintiff's said application and that the Pleasant Valley Coal Company at or about that time joined in the protest, asserting title through or under the State; but as to the ownership of the stock of said company, if the same be material, he is advised and believes, and therefore avers, that at that time the stock of the Utah Fuel Company, owner of all but 20 shares of the stock of the said Pleasant Valley Coal Company, was owned by William Salomon and Company of New York.

6. Answering the averments of paragraph 6, he states the facts to be as follows: That on June 13, 1918, the order of November

8 10, 1915, referred to in paragraph 3 of this answer, was rescinded and thereupon, and on July 25, 1918, the local land officers allowed the application of the plaintiff as an application and directed the issue of notice hereinbefore mentioned; that the record in the case fails to substantiate all other averments in paragraph 6 of the bill of complaint and the defendant is without any information whether the same be true; but he avers that on March 6, 1903, a circular of instructions approved by the Secretary of the Interior issued out of the General Land Office, which circular was in full force and effect at the date of filing of plaintiff's application as well as at the date of issue of notice thereon, as aforesaid, which circular in terms provided:

"When a school section is identified by the Government survey and no claim is at the date when the right of the State would attach, if at all, asserted thereto under the mining or public land laws, the presumption arises that the title to the land has passed to the State, but this presumption may be overcome by the submission of a satisfactory showing to the contrary. Applications presented under the mining laws covering parts of a school section will be disposed of in the same manner as contest cases;"

and that by decision of the said Secretary in the case of State of Utah (32 L. D. 117, 118), dated May 5, 1903, it was held that coal land filings covering lands within school sections—

"should not have been allowed in the absence of a determination (upon notice to all parties interested, as in other contest cases), that the lands were known to be chiefly valuable for coal deposits at the date the State was admitted into the Union."

He avers that if the allegations of paragraph 6 of the bill be true the local officers acted without authority and contrary to the regulations of the department and that such acts were void and of no effect; but he further avers the real intendment and effect of what was in fact done by said local officers was to allow plaintiff's application as the initiation of a contest proceeding against the State, and as a matter of fact he alleges it was so treated and ultimately disposed of as an application to contest.

7. He denies the averment of paragraph 7, if thereby the plaintiff means the proceedings before the local land office, and states the fact to be that said local land officers, after due hearing in the contest proceeding between the plaintiff on the one hand and the State of Utah and the Pleasant Valley Coal Company on the other hand, decided that said land was not known to be coal land at the date of admission of Utah into the Union.

8. Answering the averments of paragraph 8, he states the facts to be that at the hearing before the local land officers plaintiff took the burden of proof that the land was known to be mineral land at the time when otherwise the State's title would have attached and introduced evidence supporting his case; that at the conclusion thereof the State of Utah and the Pleasant Valley Coal Company, intervener, filed a motion to dismiss in the nature of a demurrer to the

evidence, which motion was sustained by the local land officers without hearing any testimony introduced in behalf of the State's claim; that thereupon plaintiff appealed from the decision and judgment of said local land office to the Commissioner of the General Land
9 Office; that thereupon, and on February 28, 1921, the Commissioner of the General Land Office rendered his judgment and opinion, reversing said local land officers, and in said judgment did order, and not otherwise, that:

"The protest of the State is hereby held for dismissal, subject to the right of appeal within 30 days from notice to the Secretary of the Interior."

9. He admits the allegations of paragraph 9 and states that the decision of the Secretary therein referred to is entitled State of Utah, Pleasant Valley Coal Company, intervener, v. Braffett, and is reported in 49 Land Decisions at p. 212; judicial notice thereof being respectfully requested for a further and more detailed account of the proceeding therein duly had in the Interior Department, the same as if in detail specifically plead in this answer; and in further answer to said paragraph 9 the defendant avers that in and by said decision it was ruled that the Commissioner of the General Land Office erred in his order set forth in paragraph 8 of the answer, in that he should have reversed the local land officers only to the extent of remanding the case with directions to overrule the motion to dismiss with leave to the State and the intervener to proceed with their case and to introduce evidence if so advised, as provided in the rules of practice of the Land Department; and that further it was held that the plaintiff's application was nothing more, in law, that an application to contest the right of the State to the land, that no preference right to enter the land could accrue to the plaintiff under his contest even if successful, that in the meantime the general leasing act of February 25, 1920 (41 Stat. 437), had become the law, which said act repealed all previous laws authorizing the sale of coal land except as to claims within the saving clause of section 37 of said act, and that plaintiff's application was not a valid claim within the meaning of said saving clause. Whereupon the defendant in said opinion and judgment of July 31, 1922, formally rejected plaintiff's coal application and remanded the case to the local land office for the submission of further evidence, and directed the formal intervention of the Government, to be represented by an officer of the field service of the General Land Office, and provided for the further prosecution of the contest by the Government in the event that plaintiff did not proceed as a contestant.

10. He denies the allegations in paragraph 10 of the bill, save such as are hereinafter stated, and says that the facts are as follows: That subsequent to the rendition of the decision of the Secretary on July 31, 1922, as aforesaid, both the plaintiff and the Pleasant Valley Coal Company filed motions for rehearing, which in due course were denied on October 31, 1922; that the plaintiff then filed

a petition for the exercise of supervisory authority, which was denied by the defendant on December 28, 1922; and that on said last-mentioned date, the State of Utah, through its attorney general, executed a withdrawal, and prayed a dismissal, of its protest, but without prejudice to the interests or rights of the intervener, the said Pleasant Valley Coal Company, for the reason, as therein set forth, that it had no beneficial interest in the land in controversy because on or about May 14, 1902, it had parted with its title by issuing its patent therefor to one Laura Bird. And he further alleges that on or about August 3, 1921, the United States had issued its lease to the Pleasant Valley Coal Company, under the leasing act of February 25, 1920, aforesaid, for certain other lands situate near sec. 32, T. 12 S., R. 10 E., containing 1,560 acres; that on March 2, 1923, said company filed with the defendant an application for the modification of said lease so as to include therein all of said sec. 32 (whereof the land in controversy is the SE. ¼); that in said application said company set forth that the State of Utah had offered said land at public sale in 1902, that it was purchased by and patented to said Laura Bird, and that the said Bird had deeded the title so acquired to the said company, which since 1902 had been the record owner of said land in good faith and had since said date paid all real-estate taxes levied upon said land; that by decisions of July 31, 1922, October 31, 1922, and December 28, 1922, the department had finally rejected the application of the plaintiff for the land, but had remanded the case for further hearing to determine the known character of said land on the date of admission of the State of Utah into the Union, and in said decisions had laid a rule of evidence, to wit, that the mineral character of the land might be established solely by testimony of the value of neighboring land and by showing as a matter of probability and inference the extension into this land of coal beds known to exist in the vicinity; that rather than to proceed to a further hearing, with the incidental delay and expense, and with the possibility of ultimate litigation in the courts for the protection of its asserted rights as the mesne grantee of the State, and to obviate further controversy with the United States as to the validity of its title, it offered to waive its claim to the legal title and to take a leasehold tenure therein conditioned upon the inclusion of said land in its coal-land lease, aforesaid, expressly stipulating, however, that until the granting of such modified lease it retained its asserted legal right to the possession of the land as the mesne grantee of the State of Utah with all power reserved to maintain its title before the Land Department or any other tribunal; that thereupon, as by section 2 of the act of February 25, 1920, the Secretary was authorized, among other things, to consider and recognize in awarding coal-land leases equitable rights of persons who claim such lands in good faith, and inasmuch as on the record the Pleasant Valley Coal Company was found to be a claimant

in good faith, and inasmuch as the modification of said lease would be to the interest of the United States, the Commissioner of the General Land Office, acting under the authority of the defendant, on April 2, 1923, notified the register and receiver of the local land office at Salt Lake City that the Secretary had entertained said application to include the land in controversy in said lease and directed the usual publication of notice required by section 12 of the coal-leasing regulations; that thereafter such notice was given, calling upon all persons having adverse or conflicting claims to the land or any part thereof to file a protest or objection on or before May 25, 1923, else any such protest or objection against the granting of the lease would be disregarded; that said notice was posted in the Salt Lake City land office and was published in
11 the Helper Times, a newspaper of general circulation, for a period of five successive weeks beginning April 13, 1923; and that no protest or objection was filed by plaintiff or by anyone against the granting of said lease; that he admits that so far as he knows plaintiff did not consent to this action, but whether he had actual notice thereof he is without information other than as appears in plaintiff's averment in said paragraph 10. Further answering, he avers that on June 4, 1923, said lease of August 3, 1921, was modified by the inclusion of said section 32 therein, and the lease so modified was on that date approved by the defendant; that said lease is now in full force and effect; that under and by virtue of its ownership said Pleasant Valley Coal Company, lessee, is the owner of a leasehold estate in and to the lands described in said bill of complaint with the right to remove coal from said leased premises under certain covenants and conditions, including payments of an annual cash rental to the United States and a royalty of a certain sum per ton of coal mined therefrom, and under the obligation of mining a certain minimum tonnage per annum and of expending a prescribed sum in opening and developing said leased premises.

11. Answering the averments of paragraph 11, he states that whether or not said sec. 32 was excepted from the school-land grant to the State of Utah depends entirely upon the fact of its known character at the date when the grant became effective; that if the land was then known to be mineral in character title did not pass to the State; that if the land was not then known to be mineral in character full legal title did pass to the State, inasmuch as the law does not require issue of patent to the State of Utah or any other act or deed on the part of the Secretary to pass such title; and he alleges that, as hereinbefore shown by this answer, the question as to the known character of said land has never been determined finally by the Land Department for reasons hereinbefore appearing. But he is advised, and believes, and therefore avers that whether as a fact the land was known to be mineral at the time when otherwise the State's title would have attached presents an issue immaterial in plaintiff's suit for the reason that prior to Janu-

ary 4, 1896, the date of admission of Utah into statehood, the land had been duly identified by public survey and had been returned as nonmineral in character and that prima facie a good title then and there vested in the State; that the land thereafter was not appropriable public land of the United States unless and until on proceedings duly had, to which the State of Utah or any privy in interest was a party, it was found, determined, and adjudged by the Land Department that the land was known mineral land on the date last above written; that until such an adjudication said land was not vacant coal land of the United States not otherwise appropriated or reserved by competent authority, but was land in the status where title thereto could not be disposed of by the Land Department as public land of the United States, nor could any person acquire any vested right or interest therein by any entry or application to enter under the public-land laws of the United States.

12. He admits that on or about March 14, 1924, the plaintiff filed a petition for the reopening of said proceedings, that the same was denied on March 24, 1924, and that plaintiff had fully ex-
12 hausted the procedure of the Interior Department in the establishment of his claim; but as to other allegations of fact in said paragraph he has no knowledge, and as to whether plaintiff has no adequate remedy at law he is advised that this allegation presents a conclusion of law which he need not answer.

13. He admits the allegations of paragraph 13, but avers that since the filing of plaintiff's bill herein the said Mullings, Woodmansee, Hopkins, and Turner have severally filed their similar bills of complaint in this court, and that the same are now pending under a stipulation to abide the outcome of this suit.

14. He admits the allegations of paragraph 14.

15. Answering the averments of paragraph 15, he states that he is without information concerning the same.

16. He admits the averments of fact in paragraph 16.

And now for further answer to said bill and for cause wherefore the said bill should be dismissed in part by reason of defects apparent on the face of the bill itself, he says:

(a) The Pleasant Valley Coal Company, lessee, as aforesaid and as by plaintiff's bill appears, is an indispensable party to this suit, in whose absence it should not proceed.

(b) That if by the averments of his bill it is meant that the lease to said company is for any reason invalid, and for such reason is not a bar to the relief sought by the plaintiff, the validity of said lease is not subject to collateral attack by the plaintiff herein in a suit to which said lessee is not a party, or to attack in any suit save a direct suit by the United States to annul or vacate said lease for good and sufficient cause.

(c) That by reason of plaintiff's failure to take any action by way of protest or objection to the inclusion of said land in said lease to the Pleasant Valley Coal Company, after due notice so to do, he

is barred by his conduct from any relief such as is sought in this bill.

(d) That the suit in effect is one against the United States, which has not consented to be sued in this behalf.

(e) That aside from the objection to the maintenance of the bill for lack of indispensable parties the bill exhibits no facts which entitle the plaintiff to the relief sought or to any relief in equity.

(f) That by reason of the facts set forth in the pleadings it is apparent that the land sought to be purchased by the plaintiff was not at the time of his application therfor or since vacant coal land of the United States not otherwise appropriated, subject to purchase under the provisions of Revised Statutes, section 2347, but on the contrary was land in good faith and under color of title claimed in ownership by the Pleasant Valley Coal Company as mesne grantee of the State of Utah, claiming under its school-land grant, as plaintiff then and there well knew.

(g) And that this suit is brought for the purpose of compelling defendant to perform an illegal act, to wit, to effect the sale to plaintiff and to issue to him patent for public land not subject to sale but withdrawn from sale by the terms of the act of February 25, 1920, subject only to lease for the production of the mineral therein with royalty and rental reserved to the United States.

13 Wherefore he prays that the bill of complaint may be dismissed, that he may have judgment as at law for his reasonable costs, and that he may be permitted to depart hence without day.

HUBERT WORK,
Secretary of the Interior.
By his attorney: C. EDWARD WRIGHT,
Attorney for the Interior Department.

[Duly sworn to by C. Edward Wright; jurat omitted in printing.]

In Supreme Court of District of Columbia

Notice of motion to strike

Filed June 16, 1924

* * * * * * *

To C. EDWARD WRIGHT, Esq.,
Attorney for Defendant.

Please take notice that on the 20th day of June, 1924, at 10 a. m. in equity division No. 2 of the Supreme Court of the District of Columbia, District Courthouse, in the city of Washington, the plaintiff will move to strike from the answer, on the ground that the same is redundant and immaterial, all allegations therein contained relating to the issuance of a lease by the Secretary of the Interior to the Pleasant Valley Coal Company of the premises described in the

complaint; and that on such motion the plaintiff will use the files in this suit.

HENRY R. HARRIMAN,
EDMUND BURKE,
Attorneys for Plaintiff.

JMF.

In Supreme Court of District of Columbia

Order restoring causes to calendar

Filed January 6, 1925

* * * * * * *

Whereas, and on the 20th day of June, 1924, there was submitted to the honorable Wendell P. Stafford, a justice of the supreme court sitting in equity, the above-entitled cause, together with four other equity causes pending in said court to abide event, namely, Nos. 42421, 42422, 42423, and 42424; and

14 Whereas and subsequently a præcipe was entered by the plaintiff dismissing said causes without prejudice, whereupon the clerk of this court made an order dismissing said causes without prejudice; and

Whereas the parties hereto have agreed that the said causes shall be restored to the calendar of this court for submission under the bill and answer:

Now therefore it is ordered that the clerk of this court restore said causes to the calendar.

WENDELL P. STAFFORD,
Justice, Supreme Court, D. C.

No objection:
C. EDWARD WRIGHT,
Attorney for Defendant.

JANUARY 6, 1925.

In Supreme Court of District of Columbia

Decree

Filed September 29, 1926

* * * * * * *

The above-entitled cause heretofore having been submitted for final decision and decree on the bill, answer, and stipulation of the parties, and the court after hearing argument of counsel for the respective parties, after due consideration of the issues involved, and being fully advised in the premises finds:

1. That the application of the plaintiff Braffet to purchase as coal land the tract herein involved is valid, entitles plaintiff to complete his purchase, and thereupon to receive a patent to the lands purchased.

2. That the Pleasant Valley Coal Company is not an indispensable party to this action; no right of said Pleasant Valley Coal Company to be affected by this decree.

3. That a mandatory injunction should issue from this court to the Secretary of the Interior directing him to vacate and set aside the decision of the Department of the Interior of July 31, 1922, referred to in the amended bill of complaint herein, and in all respects to affirm the prior decision of the Commissioner of the General Land Office; to further hold that Braffet's application is valid, that he is entitled thereunder to complete his purchase, and cause patent to issue in his favor upon such completed purchase. Pursuant to the foregoing findings it is hereby

Ordered, adjudged, and decreed, by the court, that the prayer of the plaintiff, Mark P. Braffet, for mandatory injunction to the Secretary of the Interior be and the same is hereby granted and the clerk of this court will issue the same, in due course, in accordance with the findings of the court herein contained.

Dated September 29th, 1926.

O. K.:

EDMUND BURKE,
Attorney for Plaintiff.

O. H. GRAVES,
Attorney for Defendant.

15 Whereupon the defendant, by his attorney, O. H. Graves, in open court, noted an appeal from the foregoing decree to the Court of Appeals of the District of Columbia, and it is hereby on the day aforesaid,

Ordered that the appeal be allowed and that execution of said decree be and the same is hereby stayed, pending said appeal.

By the court.

WENDEL P. STAFFORD, *Justice.*

In Supreme Court of District of Columbia

Assignment of errors

Filed September 29, 1926

* * * * * * *

The appellant assigns the following as errors of the Supreme Court of the District of Columbia in rendering its decree herein, viz:

1. The court erred in rendering judgment in favor of the plaintiff, Mark P. Braffet.

2. The court erred in holding to be valid the application of Braffet to purchase as coal land the tract involved and in holding that plaintiff thereby became entitled to complete said purchase and receive a patent.

3. The court erred in holding that a mandatory injunction should issue out of said court addressed to the Secretary of the Interior, and in ordering the issuance thereof directing him to vacate and set aside his decision of July 31, 1922, to affirm in all respects the prior decision of the Commissioner of the General Land Office and requiring him to hold Braffet's application to be valid and cause a patent to issue in his favor covering said land.

4. The court erred in ordering the Secretary of the Interior to issue a patent herein.

5. The court erred in finding and holding that the Pleasant Valley Coal Company is not an indispensable party to this action.

6. The court erred in failing to hold that the United States is an indispensable party to this action.

7. The court erred in failing to hold that the amended bill of complaint herein does not set forth facts sufficient to constitute a cause of action.

8. The court erred in failing to hold that the amended bill of complaint does not set forth facts sufficient to vest a court of equity with jurisdiction to grant the relief sought.

9. The court erred in failing and refusing to dismiss the amended bill of complaint in response to defendant's motion.

10. The court erred in failing to render judgment in favor of the defendant.

O. H. GRAVES,
Attorney for Appellant.

In Supreme Court of District of Columbia

Designation of record

Filed September 29, 1926

* * * * * * *

The clerk in making up the transcript of the record of appeal will include the following pleadings therein:

16 1. The amended bill of complaint.

2. The amended answer.

3. The stipulation amending answer and making it applicable to equity Nos. 42421, 42422, 42423, and 42424.

4. Notice of motion bringing on for hearing the suggestion that the Pleasant Valley Coal Company is an indispensable party defendant.

5. Stipulation submitting cause on bill and answer after restoration to the calendar.
6. Assignment of errors.
7. This designation.

O. H. GRAVES,
Attorney for Appellant.

Service of the above designation acknowledged Sept. 29th, 1926.

EDMUND BURKE,
Attorney for Appellee.

O. K.:

EDMUND BURKE,
Atty. for Plaintiff.

[Clerk's certificate to foregoing transcript omitted in printing.]

* * * * * * *

17 In Court of Appeals of District of Columbia

HUBERT WORK, AS SECRETARY OF THE INTERIOR, APPELLANT
vs.
MARK P. BRAFFET } No. 4528

Order substituting Robert I. Braffet as party appellee

Feb. 9, 1927

The death of Mark P. Braffet, appellee in the above-entitled cause, and the appointment of Robert I. Braffet as administrator of his estate, was suggested to the court by Mr. Edmund Burke of counsel for the appellee. On consideration whereof, and upon motion and agreement of counsel in open court: It is ordered that Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased, be, and he is hereby, substituted as the party appellee in this cause in the place and stead of the said Mark P. Braffet, deceased.

18 [Minute entry of submission, Feb. 9, 1927, omitted in printing.]

19 In Court of Appeals of the District of Columbia

No. 4528

HUBERT WORK, AS SECRETARY OF THE INTERIOR, APPELLANT

v.

ROBERT I. BRAFFET, ADMINISTRATOR OF THE ESTATE OF MARK P. BRAFFET, DECEASED

Before Martin, Chief Justice; Robb and Van Orsdel, Associate Justices.

Opinion.

Mr. Justice VAN ORSDEL delivered the opinion of the court:

This appeal is from a mandatory injunction issued by the Supreme Court of the District of Columbia directing Hubert Work, Secretary

of the Interior, to issue a patent to the above named appellee, Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased, to certain coal lands situated in the State of Utah.

It appears that Mark P. Braffet, a citizen of the United States, on the 4th day of February, 1918, applied to the officials of the local land office at Salt Lake City, Utah, to purchase as coal land, under section 2347 R. S., the S. E. ¼ of sec. 32, Town. 12 S., R. 10, E., S. L. M.; that on the 13th day of August, 1918, the State of Utah intervened and contested the application on the ground that at the time the school land grant was made to Utah, under the enabling act of January 4, 1896, the lands in question were not known to be coal lands; and that accordingly at that time title to the said lands vested in the State of Utah.

At about the same time, the Pleasant Valley Coal Company, hereafter for convenience referred to as the Coal Company, a Utah corporation, intervened in said application on the ground that it held title in fee to said lands under a patent from the State of Utah, alleging that the lands were agricultural only in character and claimed by the State of Utah under the enabling act. The contest proceeded in the local land office and, at the conclusion of appellee's proof, the State of Utah moved to dismiss the application, which motion was granted. Appellee appealed to the Commissioner of the General Land Office, where the decision of the local land office was reversed, the commissioner sustaining the application as valid and holding that appellee was entitled to complete his purchase.

The State of Utah and the Coal Company appealed to the Secretary of the Interior, who reversed the commissioner, holding that Braffet had prima facie established that the lands were known coal lands at the time of the grant to Utah, but that his application could not be approved since the presumptive title to the lands was in the State. The Secretary held that the motion to dismiss was erroneous and remanded the case to the local land office directing that the State of Utah be permitted to produce further proof, and permitting Braffet as the "contestant" to continue as such against the claims of Utah.

It is alleged in the answer, which for the purposes of this case must be taken as true, since the case was tried on bill and answer, that subsequent to the decision of the Secretary on July 31, 1922, Braffet and the Coal Company filed motions for rehearing, which were denied. Braffet then petitioned the Secretary for the exercise of supervisory authority, which was denied on December 28, 1922. On that day the State of Utah, through its attorney general, executed a withdrawal and prayed for a dismissal of its protest, without prejudice however to the interests of the Coal Company, alleging that it had no beneficial interest in the land, since on or about May 14, 1902, it had issued a patent therefor to one Laura Bird, who subsequently conveyed the lands to the Pleasant Valley Coal Company.

It is further alleged in the answer that on or about August 3, 1921, the United States, through the Secretary of the Interior, issued a

lease to the Coal Company under the leasing act of February 25, 1920 (41 Stat. 437), for certain lands adjoining and in the vicinity of section 32; and on March 2, 1923, the Coal Company filed with the Secretary of the Interior an application for modification of its lease so as to include therein all of section 32, offering therein to waive its claim to the legal title to said land and to take a coal land lease for the same, conditioning its waiver, however, upon the granting of the modified lease. The Secretary accordingly directed the Commissioner of the General Land Office to modify the lease of the Coal Company as requested, basing his action upon section 2 of the act of February 25, 1920, authorizing him in awarding coal land leases to recognize equitable rights of persons who claim such land in good faith.

It is clear that this case must stand or fall upon the conditions existing on February 4, 1918, the date when Braffet filed his application for the purchase of the lands in question with the register of the local land office at Salt Lake City. This application was filed under the provisions of section 2347, R. S. U. S., as follows: "Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the Register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road."

The sole question to be determined, is whether or not at the date Braffet filed his application the lands in question were vacant coal lands of the United States. That they were vacant coal lands on that date is settled by the decision of the Secretary, and the concession of the intervening claimants, the State of Utah and the Coal Company. The Secretary committed error, after finding on the original appeal that Braffet had prima facie established that the lands were known coal lands on the date of the grant to Utah, in holding that a presumptive title was acquired by the State of Utah through the grant, which entitled the State to rebut Braffet's prima facie case, since it is settled law that known mineral land does not pass to the State by a school land grant.

In United States v. Sweet, 245 U. S. 563, Mr. Justice Van Devanter, considering the question of whether known mineral lands passed to the State of Utah under its grant of school lands, said: "Another statute indicative of the policy of Congress and pertinent to the present inquiry is the act of February 28, 1891, c. 384, 26 Stat. 796,

which defines the indemnity to which a State or Territory is entitled in respect of its school grant. In addition to dealing with deficiencies occurring in other ways, it provides, 'And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land.' In this there is a plain implication that where those sections are mineral—known to be so when the grant takes effect—they do not pass under the grant. And it does not militate against this implication that under another provision the State may surrender those sections and take other lands in lieu of them where, although not known to be mineral when the grant takes effect, they are afterwards discovered to be so."

This would seem to dispose of presumptive title or any other sort of title to know mineral land passing with the grant to the State; but in the present case we do not deem it important to consider the question of whether the presumptive title existed in the State or not. It may be suggested parenthetically that an established practice has grown up in the Land Department to the effect that where an application for the purchase of coal lands is made on school numbered sections, the applicant is given the status of a contestant with the burden upon him to establish that the lands were known coal lands at the date of the grant, the State in each instance being the contestee. This being an established practice of the Land Department, the courts would not feel inclined by extraordinary process to disturb a construction thus placed upon the land law and consistently adhered to by the department through a long period of time and upon the faith of which vested rights have been acquired and large expenditures made.

But that rule has no application here, since the contestee, the State, after being given an opportunity to produce testimony to defeat Braffet's prima facie case, voluntarily withdrew from the contest, thus surrendering any rights it may have had thereunder as contestee.

This leaves the case, however, subject to another rule of practice recognized by the department in cases where the application for entry or purchase is subject to contest. After a citizen has submitted required proof of compliance with the public land law and his entry has been placed of record, he is vested with a presumptive title to the land—a title such as precludes allowance of any other claim so long as his entry remains intact. The title of the entryman is not absolute, however, but it is still subject to investigation and scrutiny, and if found for any reason to be invalid, it is liable to cancellation. But cancellation can not emanate from thin air. It must rest upon a valid foundation, since the very existence of the entry segregates the land from the mass of the public domain, and a lawful reason must exist before an entryman can be deprived of his right.

Thus it will be observed that by the rule of practice established in the department, and indeed by the law as announced by the courts

in many cases, the moment that Braffet's application for purchase was placed of record in the local land office, he acquired an interest that could not be divested in favor of any other claim so long as his entry remained intact. It was in that condition when the Secretary ordered the case remanded to the local land office. Hence, it appears that under that theory of the case the State and the Coal Company, by their failure to further contest Braffet's claim, removed the only obstacle to the allowance of his application. By his submission of prima facie proof to the satisfaction of the Land Department that the lands were known coal land at the date of the grant to the State, and the failure of the State to rebut that proof, his application became complete and upon payment of the price he is entitled to a patent.

But it is sought to sustain this case on the lease subsequently executed to the Coal Company, on the theory that under section 2 of the leasing act, after stating the conditions under which the Secretary may lease mineral lands, the act provides: "That the Secretary is hereby authorized, in awarding leases for coal lands heretofore improved and occupied or claimed in good faith, to consider and recognize equitable rights of such occupants or claimants."

The only right which the Coal Company could assert on the date that Braffet applied to purchase was through its alleged title deraigned from the State of Utah. If Utah had no title, equitable or legal, it is difficult to understand where any equitable or legal right existed in the Coal Company; neither was such equitable right created by the surrender of its claims to the United States as a condition for the execution of the lease. The Secretary of the Interior has no power to barter leases in this way; nor could the rights of Braffet, which had become vested by the abandonment of the contest by the State and the Coal Company, be defeated in this manner.

The above provision of the leasing act, however, applies only to contesting applicants for a lease. Braffet was not an applicant for a lease, but was relying upon his right acquired long prior to the passage of the leasing act. With this valid right existing, no power inhered in the Secretary to lease the lands to anybody or under any conditions. Therefore, the provision of the act in question has no application whatever to this case.

This disposes of the further assignment of error to the effect that the Coal Company is an indispensable party to this suit. The Coal Company acquired no rights either through the State of Utah or through its lease that could in any way impair the right of Braffet acquired through the filing of his application to purchase. His case in the department and here must stand or fall upon the validity of that application. If the lands in question were vacant coal lands of the United States when the application was filed, then Braffet's right to complete his purchase can not be assailed. That the lands were vacant coal lands has been determined by the decision of the Secretary in the original appeal, 49 L. D. 212, as follows: "From a

careful consideration of the evidence, the department finds that the coal applicant has established prima facie that the land was known coal land on January 4, 1896; that the commissioner's finding in this respect was correct; and that the register and receiver erred in sustaining the motion to dismiss." The finality of the decision was accepted by the State not only by its refusal to submit further proof as to the character of the lands at the date of the grant, but by its withdrawal from the case and surrender of all title or interest in the lands. The Coal Company likewise recognized its finality by surrendering its alleged title in the lands to the United States and accepting in lieu thereof the lease. As before suggested, however, the Coal Company, which relied solely upon its title through deraignment from the State, is in no better position than its alleged grantor, and Braffet's rights can not be divested by the makeshift of the lease.

It may be suggested, however, that the position here assumed by the Secretary and the Coal Company is highly inconsistent,
21 since as a condition precedent to the execution of any sort of a pretended lease the Secretary must have relied upon his finding that the lands were known coal lands on the date of the grant to the State, and upon the further admission of that fact by the Coal Company. This concession by both parties to the lease, based upon the final judgment of the Secretary in the original appeal, gave the lands the status of vacant coal lands on the date Braffet filed his application to purchase.

Nor is the assignment of error to the effect that the United States is an indispensable party to this suit well founded. What is here sought to be accomplished is to compel the Secretary to perform the mere ministerial act of recognizing the validity of Braffet's application and permitting him, or in this case his administrator, to complete the purchase and to issue a patent therefor.

It is sought to make the United States an indispensable party through the injection into this case of the lease with the Coal Company. The lease and the leasing act have nothing whatever to do with this case. The rights of Braffet were recognized by the acceptance and record of the application in the local land office and became established by the decision of the Secretary in the original appeal and the abandonment of the contest by the State of Utah. The proceedings following that by the Secretary had no effect whatever upon the rights already acquired by Braffet.

The decree entered herein, among other things, enjoins the Secretary "to vacate and set aside the decision of the Department of the Interior of July 31, 1922, referred to in the amended bill of complaint, and in all respects to affirm the prior decision of the Commissioner of the General Land Office." This portion of the decree, if essential in this case, would be beyond the jurisdiction of the court, as it would amount to the control by extraordinary remedy of the discretion of the Secretary in a matter in which he was compelled by

law to act. But for the reasons we have set forth in this opinion, the portion of the decision of the Secretary finding that Braffet's proof established that the lands in question were known coal lands on the date of the grant to the State, and the subsequent failure of the State to further contest the case, made that finding final; and in that respect, which is the only material part for the purposes of this case, the decision of the Commissioner of the General Land Office was affirmed.

We, therefore, direct the modification of the decree below to a decree enjoining the Secretary to recognize the application as valid, to permit the administrator of Braffet to complete the purchase, and to cause to be issued to him a patent for said lands.

The decree is reversed without costs, and the cause is remanded for modification of the decree in accordance with the views expressed herein.

22 In Court of Appeals of District of Columbia

[Title omitted.]

Judgment

April 4, 1927

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said Supreme Court in this cause be and the same is hereby reversed without costs, and that this cause be and the same is hereby remanded to the said Supreme Court for modification of the decree in accordance with the views expressed in the opinion of this court.

Per Mr. Justice Van Orsdel.

April 4, 1927.

23 In Court of Appeals of the District of Columbia

[Title omitted.]

Motion to stay mandate

Filed April 20, 1927

On the 20th day of April 1927, comes into open court Hubert Work, Secretary of the Interior, by his counsel of record, O. H. Graves, and advises the court that an application will be made to the Supreme Court of the United States, in due course, praying that said court direct to this court its writ of certiorari requiring the transmission thereto of the record herein, for review:

Wherefore, appellant prays that this court stay the issuance of its mandate herein for a period of three months from April 4th, 1927, the date this court rendered its opinion.

O. H. GRAVES,
Assistant to the Solicitor.

_____,
Attorney for Appellant.

CC mailed to Edmund Burke; communicated by phone with Mr. Rourke, of counsel. No objection made.

[File indorsement omitted.]

24 In Court of Appeals of District of Columbia

[Title omitted.]

Order granting motion to stay mandate

April 23, 1927

On consideration of the motion to stay the mandate for 3 months in the above entitled cause pending application for certiorari, it is ordered by the court that said motion be and the same is hereby granted.

25 In Court of Appeals of District of Columbia

[Title omitted.]

Order further staying mandate

April 30, 1927

It is ordered by the court that the order of April 23, 1927, staying the mandate in the above-entitled cause, be and the same is hereby amended so as to stay the mandate until further order.

26 In Court of Appeals of the District of Columbia

[Title omitted.]

Designation of record

Filed June 24, 1927

The clerk in the preparation of the transcript of the record on petition for certiorari to the Supreme Court of the United States in the above-entitled cause will include therein the following papers and proceedings, to wit:

1. Record.

2. Suggestion of death of party Braffet and appointment of administrator.
3. Submission of cause.
4. Opinion of the court.
5. Decree.
6. Motion to stay mandate.
7. Order granting motion to stay mandate.
8. Order of April 30th amending motion to stay mandate.
9. This designation.

O. H. GRAVES,
Attorney for Appellant

[File indorsement omitted.]

27 [Clerk's certificate to foregoing transcript omitted in printing.]

28 Supreme Court of the United States

Order allowing certiorari

Filed October 24, 1927

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Indorsement on cover:] File No. 32,796. Court of Appeals, District of Columbia. Term No. 344. Hubert Work, as Secretary of the Interior, petitioner, vs. Robert L. Braffet, administrator of the estate of Mark P. Braffet, deceased. Petition for writ of certiorari and exhibit thereto. Filed July 1, 1927. File No. 32,796.

COURT OF APPEALS, DISTRICT OF COLUMBIA

OCTOBER TERM, 1926

No. 4528

HUBERT WORK, AS SECRETARY OF THE INTERIOR, APPELLANT

vs.

MARK P. BRAFFET, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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20142—26——1

a Supreme Court of the District of Columbia

In equity. No. 42382

MARK P. BRAFFET, PLAINTIFF

vs.

HUBERT WORK, AS SECRETARY OF THE INTERIOR, DEFENDANT

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 *Amended bill of complaint*

Filed June 12, 1924

In the Supreme Court of the District of Columbia

In equity. No. 42382

MARK P. BRAFFET, PLAINTIFF

vs.

HUBERT WORK, AS SECRETARY OF THE INTERIOR, DEFENDANT

To the Supreme Court of the District of Columbia:

Comes now the above-named plaintiff, and for this amended bill of complaint, consent of the court first being had, complains herein against the defendant as follows:

I

That said plaintiff is a citizen of the United States and a citizen of and resident in the State of Utah; that at all the times herein mentioned he was upwards of twenty-one years of age and was and still is qualified in all respects to purchase known coal lands of the United States, pursuant to law in relation thereto; that he brings this suit in his own right and not otherwise.

II

That the above-named defendant is the duly appointed, qualified, and acting Secretary of the Interior, and temporarily a resident in the District of Columbia, and is sued herein in his representative capacity and not otherwise.

2 III

That at the United States land office at the city of Salt Lake, in the State of Utah, and on February 4, 1918, this plaintiff filed in

said land office his application under the provisions of section 2347, U. S. Revised Statutes, to purchase the following-described known coal lands, and known as such on the date of the admission of the State of Utah, which were a part of the public lands of the United States and then subject to purchase by this plaintiff, and not otherwise appropriated or reserved under the laws of the United States, situate in the State of Utah and county of Carbon, and more particularly described as follows, namely: SE. ¼ of sec. 32, township 12 S., range 10 E., S. L. M., and thereupon and at the same time paid to the register and receiver thereof the fees required by law therefor and received thereupon their receipt therefor; that said application is serial No. 022470, and subsequently there was endorsed thereon, pursuant to the order and direction of the Department of the Interior, the following directions and words, namely: "Suspended pending disposition of contest 3655."

IV

That thereupon the said register and receiver, and on the 25th day of July, 1918, directed a notice of publication of said application, and thereupon a publication thereof was had in a newspaper as directed, published in the vicinity of said lands, and which, amongst other things, directed all persons to file any and all objections they may have had to the said application on or before the expira-
3 tion of thirty days from the 25th day of July, 1918, and thereon notice of said application was given to the State of Utah.

V

That on the 13th day of August, 1918, the State of Utah intervened in said application, proceeding on the ground that the title to said lands had passed to said State by reason of the school-land grant to said State contained in the Utah enabling act of date of January 4, 1896; and about the same time the Pleasant Valley Coal Company, a corporation created and existing pursuant to the laws of Utah, and whose major stock was then owned by the Utah Fuel Company, a corporation created and existing pursuant to the laws of New Jersey, and whose major stock was then owned by the Denver and Rio Grande Railroad Company, a railroad corporation, also intervened in said application on the ground that it claimed title in fee under and through a patent from said State of Utah for said lands, and that said lands were agricultural only in character and claimed by the said State of Utah under its enabling act.

VI

That on or about the 25th day of July, 1918, the said register and receiver approved said application and subsequently directed said plaintiff to complete his purchase by payment within fifteen days thereafter at the price designated in the classification price thereof; but before the expiration of said period, by order of the Depart-
ment of the Interior therein, said payment therein was sus-
4 pended and deferred until the determination of the contest by said department, all of which more fully appears hereinafter.

VII

That in said proceedings it was determined that said lands were known coal lands at the date of the admission of Utah into the Union of the States, on and prior to January 4, 1896.

VIII

That on the 18th day of February, 1920, after a hearing in the local land office arising under said contest by the State of Utah and said Pleasant Valley Coal Company, the application of plaintiff was dismissed, and thereupon plaintiff appealed therefrom, and within thirty days thereafter, to the Commissioner of the General Land Office, and in the proceeding therein on appeal the action of said local land office was wholly reversed and direction made therein that plaintiff be allowed to complete his purchase of said known coal lands.

IX

That thereupon the said contestants appealed from said order to the Secretary of the Interior, and in proceedings had therein and on the 31st day of July, 1922, an order was made remanding said proceeding to said local office to permit said State of Utah to offer additional proofs therein and directing the Government to formally intervene therein.

X

That thereafter and without notice to the plaintiff, and without his knowledge, privity, or consent, the said State of Utah filed with the said register and receiver in said local land office and in said appeal proceeding its abandonment of said contest and of any claim on its part of any title in or to said lands, and admitting said lands were known coal lands at the date of the admission of Utah into the Union of States; and thereupon the Pleasant Valley Coal Company did likewise; and thereupon and without notice to plaintiff, and without his knowledge, privity, or consent, and on the 8th day of January, 1924, and on representations and statements made to the Secretary of the Interior by the officers, agents, and attorneys of said State of Utah and Pleasant Valley Coal Company, and of which plaintiff had no knowledge or notice, and wholly without notice to or knowledge, privity, or consent of plaintiff, the Secretary of the Interior closed said proceedings without notice to plaintiff before or since.

XI

That all of said section 32 was excepted from the school land grant to Utah, the same being known coal lands at the date of the grant, and Utah had no right, title, or interest, or presumptive title therein or to any part thereof, and no legal, equitable, or presumptive title passed to Utah thereby or thereunder to said section 32 or to any part thereof; but the same remained a part of the public domain of the United States and subject to mineral entry and to purchase under the coal laws of the United States by plaintiff and said applicants.

6

XII

That heretofore and after learning for the first time of the closing of the said proceeding, as aforesaid, and on the 15th day of March, 1924, plaintiff made application to the Department of the Interior to reopen said proceedings, but on the 24th day of March, 1924, said application was denied, and plaintiff has fully exhausted the procedure of said Department of the Interior in the establishment of his rights and claim and has no further remedy or procedure therein and has no adequate remedy at law.

XIII

That heretofore and on the 4th day of February, 1918, one Agnus J. Mullings made similar application to purchase S. ½ NW. ¼, E. ½ SW. ¼, sec. 32, township 12 S., range 10 E., S. L. M.; as did also one Robert J. Turner to purchase NE. ¼ id.; and as did also one John H. Woodmansee to purchase N. ½ NW. ¼ id.; and on the 9th day of October, 1919, one Robert W. Hopkins made application to purchase W. ½ SW. ¼ id. in the same manner as did the plaintiff, as aforesaid; and similar publications, proceedings, and contests following said respective applications by the same said parties, the State of Utah and Pleasant Valley Coal Company, it was agreed and stipulated by the said parties, and which stipulation was agreed to by the Department of the Interior, that the disposition of the same should abide the final disposition of the said proceeding of the plaintiff.

Therefore plaintiff prays, amongst other things, that similar action be had herein based on said stipulations, so that a multi-

7 plicity of suits concerning the same subject matter may be avoided, or that they be included as defendants herein, in that their several rights under their several applications to purchase the said designated lands be determined and adjudicated in this suit, or that they be severally permitted to intervene herein, for adjudication and determination of their respective rights arising under their said respective applications to purchase as aforesaid; and it is further alleged applicants were severally qualified in every respect to make and perfect their said respective applications; that said respective applicants have no adequate remedy at law.

XIV

That at the time of said application of plaintiff the said lands had been divided into legal subdivisions under an approved survey by the United States and had been classified by the United States as known coal land.

XV

That at the time of plaintiff's said application and ever since the plaintiff was and now is ready, able, and willing to complete his said purchase and to pay the classified price thereof, which is the reasonable value thereof.

XVI

That subsequent to the closing of said contest and dismissal of said proceeding, as aforesaid, plaintiff basing his application on the said proceedings of the State of Utah, the Pleasant Valley Coal Company, in withdrawing from said contest proceeding, and the Secre-
8 tary defendant, as aforesaid, and setting forth the same in extenso, moved to reopen his said proceeding, but said Secretary defendant denied said application, and plaintiff is now without remedy therein, having fully exhausted the procedure, rules, and regulations of the Department of the Interior in such instance and in the establishment and maintenance of his rights therein.

Wherefore plaintiff prays that a writ of subpœna issue directed to said Secretary defendant, requiring him to appear herein and answer the exigencies of this bill of complaint; that a mandatory injunction issue against the defendant Secretary, directing that the decision of the Department of the Interior of July 31, 1922, be vacated, and that the prior said decision of the Commissioner of the General Land Office be affirmed in all respects, and that it be further adjudicated and decreed that the said application of plaintiff was valid, and that he be permitted by the defendant Secretary to complete his purchase of said lands in the manner provided by law, and thereupon that a patent shall issue to plaintiff therefor.

That plaintiff may have such other and further relief as may be just and equitable.

HENRY R. HARRIMAN,
EDMUND BURKE,
Attorneys for Plaintiff.

JMF.

9 UNITED STATES OF AMERICA,
District of Columbia, ss:

Edmund Burke, being duly sworn, deposes and says:

That he is one of the attorneys for plaintiff herein; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to his best information and belief. That the plaintiff is absent from the District of Columbia.

EDMUND BURKE.

Subscribed and sworn to before me this 11th day of June, A. D. 1924.

(Notarial seal.)
JMF.

FRANCIS L. NEUBECK,
Notary Public, D. C.

Stipulation as to action in cases Nos. 42421, 42422, 42423, and 42424

Filed April 25, 1924

* * * * * * *

It is hereby stipulated by and between the attorneys for the above-named parties that the above-entitled actions abide the determination by this court of the issues in the suit in equity, No. 42382,

wherein Mark P. Braffet is plaintiff and Hubert Work as Secretary of the Interior is defendant.

Dated April 7, 1924.

EDMUND BURKE,
HENRY R. HARRIMAN,
Attorneys for Plaintiffs.
C. EDWARD WRIGHT,
Attorney for Defendant.

10 *Answer*

Filed June 9, 1924

* * * * * * *

The defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies of the plaintiff's bill of complaint in the above-entitled suit, and especially saving and reserving all benefit and advantage from those matters hereinafter set forth as grounds for the dismissal of said bill, for answer to said bill or so much thereof as he is advised is material, says:

1. He admits the averments of paragraph 1.

2. He admits the averments of paragraph 2.

3. He admits that on February 4, 1918, at the United States land office at Salt Lake City, Utah, plaintiff filed application under Revised Statutes, section 2347, to purchase the SE. ¼ of sec. 32, T. 12 S., R. 10 E., S. L. M., as coal land of the United States, that he paid a filing fee of $10 therefor, that said application was given serial number 022470, and that subsequently the application was indorsed as averred in said paragraph; but he further says that by act of Congress approved July 16, 1894, sec. 32 of every township in the State of Utah was granted to said State for school purposes; that the aforesaid section had been officially surveyed prior to the admission of Utah into the Union and was returned as nonmineral in character; that on July 3, 1907, the General Land Office classified said land, as of that date, as coal land, which classification
11 was in force at the time of plaintiff's said application; that at the date of filing said application, however, it had never been determined that the land was of known mineral character at the date when the said school-land grant to the State of Utah attached; that said State claimed that it took title to each granted school section whether the same was mineral or nonmineral; that for some years prior to plaintiff's application the validity of said claim, to wit, that the State took title to granted sections regardless of mineral character, had been in litigation (United States v. Sweet, 245 U. S., 563), the ultimate decision of the Supreme Court being that it did not so take title to land known to be mineral at the time when the State's rights otherwise would have attached; that pending said litigation, and on November 10, 1915, the Secretary of the Interior had suspended the functions of local land officers, including the land officers of the said Salt Lake City land office, affecting coal-land applications for lands included in school sections, and had directed said officers to receive and transmit all

applications to enter, based on alleged mineral character of land, to the General Land Office until further directed; that said instructions were in full force and effect on February 4, 1918, and until June 13, 1918, and that during said period said officers had no authority to take any action on any such application other than simply to receive and transmit the same to the General Land Office; that the State of Utah long prior to the filing of said application by the plaintiff claimed the land in controversy under its school-land grant and had actually sold said land in 1902 to a
12 party, the grantor of the Pleasant Valley Coal Company, hereinafter mentioned, all of which was then and there well known to the plaintiff; that the defendant is informed and believes and therefore avers that in the year 1902 plaintiff was the attorney for the said Pleasant Valley Coal Company and so continued to be until the year 1917, much of said period being either general attorney or general solicitor of said company and occupying offices with said company; that during said relation of attorney and client plaintiff well knew of the asserted claim of title to said land by said company and of its deraignment from the said State of Utah; that the land, at the time of filing said application, was not vacant coal land of the United States not otherwise appropriated or reserved by competent authority and was not subject to entry under the provisions of Revised Statutes, section 2347; that the land having been returned as nonmineral in character, title had presumably passed to the State of Utah upon its admission as a State and was in the State unless and until, after proper proceeding and due process of law, it had been found and determined that the land was actually known to be mineral in character at the time when the State's title, if at all, attached; that the filing by plaintiff of his said application to purchase said land constituted in effect but an application to contest the presumed title of said State, and it was so treated; and that the said application was not subject to acceptance and allowance unless and until it should be determined, as aforesaid, that said land was in fact known to be mineral in character at the date of the admission of Utah into the Union.

13 4. Answering the averments of paragraph 4, he admits the same and alleges that the said notice was published in the Helper Times, a newspaper of general circulation published near said land, for five consecutive weeks, beginning August 2 and ending August 30, 1918, a like notice being posted in the said Salt Lake City land office.

5. Answering the averments of paragraph 5, he says that on or about August 13, 1918, the State of Utah, claiming title to said land as aforesaid, filed a protest against the allowance of plaintiff's said application and that the Pleasant Valley Coal Company at or about that time joined in the protest, asserting title through or under the State; but as to the ownership of the stock of said company, if the same be material, he is advised and believes, and therefore avers, that at that time the stock of the Utah Fuel Company, owner of all but 20 shares of the stock of the said Pleasant Valley Coal Company, was owned by William Salomon and Company of New York.

6. Answering the averments of paragraph 6, he states the facts to be as follows: That on June 13, 1918, the order of November 10,

1915, referred to in paragraph 3 of this answer, was rescinded and thereupon, and on July 25, 1918, the local land officers allowed the application of the plaintiff as an application and directed the issue of notice hereinbefore mentioned; that the record in the case fails to substantiate all other averments in paragraph 6 of the bill of complaint and the defendant is without any information whether the same be true; but he avers that on March 6, 1903, a circular of
14 instructions approved by the Secretary of the Interior issued out of the General Land Office, which circular was in full force and effect at the date of filing of plaintiff's application as well as at the date of issue of notice thereon, as aforesaid, which circular in terms provided:

"When a school section is identified by the Government survey and no claim is at the date when the right of the State would attach, if at all, asserted thereto under the mining or public land laws, the presumption arises that the title to the land has passed to the State, but this presumption may be overcome by the submission of a satisfactory showing to the contrary. Applications presented under the mining laws covering parts of a school section will be disposed of in the same manner as contest cases;"

and that by decision of the said Secretary in the case of State of Utah (32 L. D. 117, 118), dated May 5, 1903, it was held that coal land filings covering lands within school sections—

"should not have been allowed in the absence of a determination (upon notice to all parties interested, as in other contest cases), that the lands were known to be chiefly valuable for coal deposits at the date the State was admitted into the Union."

He avers that if the allegations of paragraph 6 of the bill be true the local officers acted without authority and contrary to the regulations of the department and that such acts were void and of no effect; but he further avers the real intendment and effect of what was in fact done by said local officers was to allow plaintiff's application as the initiation of a contest proceeding against the State, and as a matter of fact he alleges it was so treated and ultimately disposed of as an application to contest.

7. He denies the averment of paragraph 7, if thereby the plaintiff means the proceedings before the local land office, and states
15 the fact to be that said local land officers, after due hearing in the contest proceeding between the plaintiff on the one hand and the State of Utah and the Pleasant Valley Coal Company on the other hand, decided that said land was not known to be coal land at the date of admission of Utah into the Union.

8. Answering the averments of paragraph 8, he states the facts to be that at the hearing before the local land officers plaintiff took the burden of proof that the land was known to be mineral land at the time when otherwise the State's title would have attached and introduced evidence supporting his case; that at the conclusion there of the State of Utah and the Pleasant Valley Coal Company, intervener, filed a motion to dismiss in the nature of a demurrer to the evidence, which motion was sustained by the local land officers without hearing any testimony introduced in behalf of the State's claim that thereupon plantiff appealed from the decision and judgment of said local land office to the Commissioner of the General Land Office

that thereupon, and on February 28, 1921, the Commissioner of the General Land Office rendered his judgment and opinion, reversing said local land officers, and in said judgment did order, and not otherwise, that:

"The protest of the State is hereby held for dismissal, subject to the right of appeal within 30 days from notice to the Secretary of the Interior."

9. He admits the allegations of paragraph 9 and states that the decision of the Secretary therein referred to is entitled State of Utah, Pleasant Valley Coal Company, intervener, v. Braffett, and is reported in 49 Land Decisions at p. 212; judicial notice thereof being respectfully requested for a further and more detailed
16 account of the proceeding therein duly had in the Interior Department, the same as if in detail specifically plead in this answer; and in further answer to said paragraph 9 the defendant avers that in and by said decision it was ruled that the Commissioner of the General Land Office erred in his order set forth in paragraph 8 of the answer, in that he should have reversed the local land officers only to the extent of remanding the case with directions to overrule the motion to dismiss with leave to the State and the intervener to proceed with their case and to introduce evidence if so advised, as provided in the rules of practice of the Land Department; and that further it was held that the plaintiff's application was nothing more, in law, that an application to contest the right of the State to the land, that no preference right to enter the land could accrue to the plaintiff under his contest even if successful, that in the meantime the general leasing act of February 25, 1920 (41 Stat. 437), had become the law, which said act repealed all previous laws authorizing the sale of coal land except as to claims within the saving clause of section 37 of said act, and that plaintiff's application was not a valid claim within the meaning of said saving clause. Whereupon the defendant in said opinion and judgment of July 31, 1922, formally rejected plaintiff's coal application and remanded the case to the local land office for the submission of further evidence, and directed the formal intervention of the Government, to be represented by an officer of the field service of the General Land Office, and provided for the further prosecution of the contest by the Government
17 in the event that plaintiff did not proceed as a contestant.

10. He denies the allegations in paragraph 10 of the bill, save such as are hereinafter stated and says that the facts are as follows: That subsequent to the rendition of the decision of the Secretary on July 31, 1922, as aforesaid, both the plaintiff and the Pleasant Valley Coal Company filed motions for rehearing, which in due course were denied on October 31, 1922; that the plaintiff then filed a petition for the exercise of supervisory authority, which was denied by the defendant on December 28, 1922; and that on said last-mentioned date, the State of Utah, through its attorney general, executed a withdrawal, and prayed a dismissal, of its protest, but without prejudice to the interests or rights of the intervener, the said Pleasant Valley Coal Company, for the reason, as therein set forth, that it had no beneficial interest in the land in controversy because on or about May 14, 1902, it had parted with its title by issuing its patent therefor to one, Laura Bird. And he

further alleges that on or about August 3, 1921, the United States had issued its lease to the Pleasant Valley Coal Company, under the leasing act of February 25, 1920, aforesaid, for certain other lands situate near sec. 32, T. 12 S., R. 10 E., containing 1,560 acres; that on March 2, 1923, said company filed with the defendant an application for the modification of said lease so as to include therein all of said sec. 32 (whereof the land in controversy is the SE. ¼); that in said application said company set forth that the State of Utah had offered said land at public sale in 1902, that it was pur-
18 chased by and patented to said Laura Bird, and that the said Bird had deeded the title so acquired to the said company, which since 1902 had been the record owner of said land in good faith and had since said date paid all real-estate taxes levied upon said land; that by decisions of July 31, 1922, October 31, 1922, and December 28, 1922, the department had finally rejected the application of the plaintiff for the land, but had remanded the case for further hearing to determine the known character of said land on the date of admission of the State of Utah into the Union, and in said decisions had laid a rule of evidence, to wit, that the mineral character of the land might be established solely by testimony of the value of neighboring land and by showing as a matter of probability and inference the extension into this land of coal beds known to exist in the vicinity; that rather than to proceed to a further hearing, with the incidental delay and expense, and with the possibility of ultimate litigation in the courts for the protection of its asserted rights as the mesne grantee of the State, and to obviate further controversy with the United States as to the validity of its title, it offered to waive its claim to the legal title and to take a leasehold tenure therein conditioned upon the inclusion of said land in its coal-land lease, aforesaid, expressly stipulating, however, that until the granting of such modified lease it retained its asserted legal right to the possession of the land as the mesne grantee of the State of Utah with all power reserved to maintin its title before the Land Department or any other tribunal; that thereupon, as by section 2 of the act of February 25, 1920, the
19 Secretary was authorized, among other things, to consider and recognize in awarding coal-land leases equitable rights of persons who claim such lands in good faith, and inasmuch as on the record the Pleasant Valley Coal Company was found to be a claimant in good faith, and inasmuch as the modification of said lease would be to the interest of the United States, the Commissioner of the General Land Office, acting under the authority of the defendant, on April 2, 1923, notified the register and receiver of the local land office at Salt Lake City that the Secretary had entertained said application to include the land in controversy in said lease and directed the usual publication of notice required by section 12 of the coal-leasing regulations; that thereafter such notice was given, calling upon all persons having adverse or conflicting claims to the land or any part thereof to file a protest or objection on or before May 25, 1923, else any such protest or objection against the granting of the lease would be disregarded; that said notice was posted in the Salt Lake City land office and was published in the

Helper Times, a newspaper of general circulation, for a period of five successive weeks beginning April 13, 1923; and that no protest or objection was filed by plaintiff or by anyone against the granting of said lease; that he admits that so far as he knows plaintiff did not consent to this action, but whether he had actual notice thereof he is without information other than as appears in plaintiff's averment in said paragraph 10. Further answering, he avers that on June 4, 1923, said lease of August 3, 1921, was modified by
20 the inclusion of said section 32 therein, and the lease so modified was on that date approved by the defendant; that said lease is now in full force and effect; that under and by virtue of its ownership said Pleasant Valley Coal Company, lessee, is the owner of a leasehold estate in and to the lands described in said bill of complaint with the right to remove coal from said leased premises under certain covenants and conditions, including payments of an annual cash rental to the United States and a royalty of a certain sum per ton of coal mined therefrom, and under the obligation of mining a certain minimum tonnage per annum and of expending a prescribed sum in opening and developing said leased premises.

11. Answering the averments of paragraph 11, he states that whether or not said sec. 32 was excepted from the school-land grant to the State of Utah depends entirely upon the fact of its known character at the date when the grant became effective; that if the land was then known to be mineral in character title did not pass to the State; that if the land was not then known to be mineral in character full legal title did pass to the State, inasmuch as the law does not require issue of patent to the State of Utah or any other act or deed on the part of the Secretary to pass such title; and he alleges that, as hereinbefore shown by this answer, the question as to the known character of said land has never been determined finally by the Land Department for reasons hereinbefore appearing. But he is advised, and believes, and therefore avers that whether as a fact the land was known to be mineral at the time when otherwise the State's title would have attached presents an issue
21 immaterial in plaintiff's suit for the reason that prior to January 4, 1896, the date of admission of Utah into statehood, the land had been duly identified by public survey and had been returned as nonmineral in character and that prima facie a good title then and there vested in the State; that the land thereafter was not appropriable public land of the United States unless and until on proceedings duly had, to which the State of Utah or any privy in interest was a party, it was found, determined, and adjudged by the Land Department that the land was known mineral land on the date last above written; that until such an adjudication said land was not vacant coal land of the United States not otherwise appropriated or reserved by competent authority, but was land in the status where title thereto could not be disposed of by the Land Department as public land of the United States, nor could any person acquire any vested right or interest therein by any entry or application to enter under the public-land laws of the United States.

12. He admits that on or about March 14, 1924, the plaintiff filed a petition for the reopening of said proceedings, that the same was denied on March 24, 1924, and that plaintiff had fully exhausted the

procedure of the Interior Department in the establishment of his claim; but as to other allegations of fact in said paragraph he has no knowledge, and as to whether plaintiff has no adequate remedy at law he is advised that this allegation presents a conclusion of law which he need not answer.

13. He admits the allegations of paragraph 13, but avers that since the filing of plaintiff's bill herein the said Mullings, Woodmansee, Hopkins, and Turner have severally filed their similar bills of complaint in this court, and that the same are now pending under a stipulation to abide the outcome of this suit.

22

14. He admits the allegations of paragraph 14.

15. Answering the averments of paragraph 15, he states that he is without information concerning the same.

16. He admits the averments of fact in paragraph 16.

And now for further answer to said bill and for cause wherefore the said bill should be dismissed in part by reason of defects apparent on the face of the bill itself, he says:

(a) The Pleasant Valley Coal Company, lessee, as aforesaid and as by plaintiff's bill appears, is an indispensable party to this suit, in whose absence it should not proceed.

(b) That if by the averments of his bill it is meant that the lease to said company is for any reason invalid, and for such reason is not a bar to the relief sought by the plaintiff, the validity of said lease is not subject to collateral attack by the plaintiff herein in a suit to which said lessee is not a party, or to attack in any suit save a direct suit by the United States to annul or vacate said lease for good and sufficient cause.

(c) That by reason of plaintiff's failure to take any action by way of protest or objection to the inclusion of said land in said lease to the Pleasant Valley Coal Company, after due notice so to do, he is barred by his conduct from any relief such as is sought in this bill.

23

(d) That the suit in effect is one against the United States, which has not consented to be sued in this behalf.

(e) That aside from the objection to the maintenance of the bill for lack of indispensable parties the bill exhibits no facts which entitle the plaintiff to the relief sought or to any relief in equity.

(f) That by reason of the facts set forth in the pleadings it is apparent that the land sought to be purchased by the plaintiff was not at the time of his application therefor or since vacant coal land of the United States not otherwise appropriated, subject to purchase under the provisions of Revised Statutes, section 2347, but on the contrary was land in good faith and under color of title claimed in ownership by the Pleasant Valley Coal Company as mesne grantee of the State of Utah, claiming under its school-land grant, as plaintiff then and there well knew.

(g) And that this suit is brought for the purpose of compelling defendant to perform an illegal act, to wit, to effect the sale to plaintiff and to issue to him patent for public land not subject to sale but withdrawn from sale by the terms of the act of February 25, 1920, subject only to lease for the production of the mineral therein with royalty and rental reserved to the United States.

Wherefore he prays that the bill of complaint may be dismissed, that he may have judgment as at law for his reasonable costs, and that he may be permitted to depart hence without day.

HUBERT WORK,
Secretary of the Interior.
By his attorney: C. EDWARD WRIGHT,
Attorney for the Interior Department.

24 DISTRICT OF COLUMBIA, *ss:*

C. Edward Wright, being first duly sworn, says that he is attorney for the defendant and has read over and is acquainted with the contents of the aforegoing answer by him subscribed; that he is informed that the matters of fact therein set forth are true and he believes them to be true.

C. EDWARD WRIGHT,
Attorney for the Interior Deparment.

Subscribed and sworn to this 7th day of June, 1924, before me,

W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

(Notarial seal.)

Notice of motion

Filed June 16, 1924

* * * * * * *

To C. EDWARD WRIGHT, Esq.,
Attorney for Defendant.

Please take notice that on the 20th day of June, 1924, at 10 a. m. in equity division No. 2 of the Supreme Court of the District of Columbia, District Courthouse, in the city of Washington, the plaintiff will move to strike from the answer, on the ground that the same is redundant and immaterial, all allegations therein contained relating to the issuance of a lease by the Secretary of the
25 Interior to the Pleasant Valley Coal Company of the premises described in the complaint; and that on such motion the plaintiff will use the files in this suit.

HENRY R. HARRIMAN,
EDMUND BURKE,
Attorneys for Plaintiff.

JMF.

Order restoring causes to calendar

Filed January 6, 1925

* * * * * * *

Whereas, and on the 20th day of June, 1924, there was submitted to the honorable Wendell P. Stafford, a justice of the supreme court sitting in equity, the above-entitled cause, together with four other equity causes pending in said court to abide event, namely, Nos. 42421, 42422, 42423, and 42424; and

Whereas and subsequently a præcipe was entered by the plaintiff dismissing said causes without prejudice, whereupon the clerk of this court made an order dismissing said causes without prejudice; and

Whereas the parties hereto have agreed that the said causes shall be restored to the calendar of this court for submission under the bill and answer:

Now therefore it is ordered that the clerk of this court restore said causes to the calendar.

WENDELL P. STAFFORD,
Justice, Supreme Court, D. C.

No objection:

C. EDWARD WRIGHT,
Attorney for Defendant.

JANUARY 6, 1925.

26 *Decree*

Filed September 29, 1926

* * * * * * *

The above-entitled cause heretofore having been submitted for final decision and decree on the bill, answer, and stipulation of the parties, and the court after hearing argument of counsel for the respective parties, after due consideration of the issues involved, and being fully advised in the premises finds:

1. That the application of the plaintiff Braffet to purchase as coal land the tract herein involved is valid, entitles plaintiff to complete his purchase, and thereupon to receive a patent to the lands purchased.

2. That the Pleasant Valley Coal Company is not an indispensable party to this action; no right of said Pleasant Valley Coal Company to be affected by this decree.

3. That a mandatory injunction should issue from this court to the Secretary of the Interior directing him to vacate and set aside the decision of the Department of the Interior of July 31, 1922, referred to in the amended bill of complaint herein, and in all respects to affirm the prior decision of the Commissioner of the General Land Office; to further hold that Braffet's application is valid, that he is entitled thereunder to complete his purchase, and cause patent to issue in his favor upon such completed purchase.

Pursuant to the foregoing findings it is hereby,

Ordered, adjudged, and decreed, by the court, that the
27 prayer of the plaintiff, Mark P. Braffet, for mandatory injunction to the Secretary of the Interior be and the same is hereby granted and the clerk of this court will issue the same, in due course, in accordance with the findings of the court herein contained.

Dated September 29th, 1926.

O. K.:

EDMUND BURKE,
Attorney for plaintiff.

O. H. GRAVES,
Attorney for Defendant.

Whereupon the defendant, by his attorney, O. H. Graves, in open court, noted an appeal from the foregoing decree to the Court of Appeals of the District of Columbia, and it is hereby on the day aforesaid,

Ordered that the appeal be allowed and that execution of said decree be and the same is hereby stayed, pending said appeal.

By the Court.

WENDEL P. STAFFORD, *Justice.*

Assignment of errors

Filed September 29, 1926

* * * * * * *

The appellant assigns the following as errors of the Supreme Court of the District of Columbia in rendering its decree herein, viz:

1. The court erred in rendering judgment in favor of the plaintiff, Mark P. Braffet.

28 2. The court erred in holding to be valid the application of Braffet to purchase as coal land the tract involved and in holding that plaintiff thereby became entitled to complete said purchase and receive a patent.

3. The court erred in holding that a mandatory injunction should issue out of said court addressed to the Secretary of the Interior, and in ordering the issuance thereof directing him to vacate and set aside his decision of July 31, 1922, to affirm in all respects the prior decision of the Commissioner of the General Land Office and requiring him to hold Braffet's application to be valid and cause a patent to issue in his favor covering said land.

4. The court erred in ordering the Secretary of the Interior to issue a patent herein.

5. The court erred in finding and holding that the Pleasant Valley Coal Company is not an indispensable party to this action.

6. The court erred in failing to hold that the United States is an indispensable party to this action.

7. The court erred in failing to hold that the amended bill of complaint herein does not set forth facts sufficient to constitute a cause of action.

8. The court erred in failing to hold that the amended bill of complaint does not set forth facts sufficient to vest a court of equity with jurisdiction to grant the relief sought.

9. The court erred in failing and refusing to dismiss the amended bill of complaint in response to defendant's motion.

29 10. The court erred in failing to render judgment in favor of the defendant.

O. H. GRAVES,
Attorney for Appellant.

Designation of record

Filed September 29, 1926

* * * * * * *

The clerk in making up the transcript of the record of appeal will include the following pleadings therein:

1. The amended bill of complaint.
2. The amended answer.
3. The stipulation amending answer and making it applicable to equity Nos. 42421, 42422, 42423, and 42424.
4. Notice of motion bringing on for hearing the suggestion that the Pleasant Valley Coal Company is an indispensable party defendant.
5. Stipulation submitting cause on bill and answer after restoration to the calendar.
6. Assignment of errors.
7. This designation.

O. H. GRAVES,
Attorney for Appellant.

Service of the above designation acknowledged Sept. 29th, 1926.

EDMUND BURKE,
Attorney for Appellee.

O. K.:
EDMUND BURKE,
Atty. for plaintiff.

30 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 29, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript in cause No. 42382 in equity, wherein Mark P. Braffet is plaintiff and Hubert Work as Secretary of the Interior is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 29th day of October, 1926.

[SEAL.] FRANK E. CUNNINGHAM, *Clerk.*

[Indorsement on cover:] District of Columbia Supreme Court. No. 4528. Hubert Work, as Secretary of the Interior, appellant, vs. Mark P. Braffet. Court of Appeals, District of Columbia. Filed Nov. 15, 1926. Henry W. Hodges, clerk.

WEDNESDAY, FEBRUARY 9, A. D. 1927.

Hubert Work, as Secretary of the Interior, Appellant

v.

Mark P. Braffet. No. 4528

The death of Mark P. Braffet, appellee in the above-entitled cause, and the appointment of Robert I. Braffet as administrator of his estate, was suggested to the Court by Mr. Edmund Burke, of counsel for the appellee. On consideration whereof, and upon motion and agreement of counsel in open court, It is ordered that Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased, be, and he is hereby, substituted as the party appellee in this cause, in the place and stead of the said Mark P. Braffet, deceased.

WEDNESDAY, FEBRUARY 9, A. D. 1927.

Hubert Work, as Secretary of the Interior, Appellant

v.

Robert I. Braffet, Administrator of the Estate of Mark P. Braffet, deceased. No. 4528

The above-entitled cause was submitted to the consideration of the court on the printed record and briefs filed herein by Mr. O. H. Graves, attorney for the appellant, and by Messrs. Edmund Burke, Simon H. Rourke, and John G. Jaeger, attorneys for the appellee.

Court of Appeals of the District of Columbia. Hubert Work, as Secretary of the Interior, appellant, *v.* Robert I. Braffet, Administrator of the Estate of Mark P. Braffat, deceased. No. 4528.

Before Martin, Chief Justice; Robb and Van Orsdel, Associate Justices.

Mr. Justice Van Orsdel delivered the opinion of the court:

This appeal is from a mandatory injunction issued by the Supreme Court of the District of Columbia directing Hubert Work, Secretary of the Interior, to issue a patent to the above-named appellee, Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased, to certain coal lands situated in the State of Utah.

It appears that Mark P. Braffet, a citizen of the United States, on the 4th day of February, 1918, applied to the officials of the local land office at Salt Lake City, Utah, to purchase as coal land, under section 2347 R. S., the S. E. ¼ of sec. 32, town. 12 S., R. 10, E., S. L. M.; that on the 13th day of August, 1918, the State of Utah intervened and contested the application on the ground that at the time the school land grant was made to Utah, under the enabling act

of January 4, 1896, the lands in question were not known to be coal lands; and that accordingly at that time title to the said lands vested in the State of Utah.

At about the same time the Pleasant Valley Coal Company, hereafter for convenience referred to as the coal company, a Utah corporation, intervened in said application on the ground that it held title in fee to said lands under a patent from the State of Utah, alleging that the lands were agricultural only in character and claimed by the State of Utah under the enabling act. The contest proceeded in the local land office and, at the conclusion of appellee's proof, the State of Utah moved to dismiss the application, which motion was granted. Appellee appealed to the Commissioner of the General Land Office, where the decision of the local land office was reversed, the commissioner sustaining the application as valid and holding that appellee was entitled to complete his purchase.

The State of Utah and the coal company appealed to the Secretary of the Interior, who reversed the commissioner, holding that Braffet had prima facie established that the lands were known coal lands at the time of the grant to Utah, but that his application could not be approved since the presumptive title to the lands was in the State. The Secretary held that the motion to dismiss was erroneous and remanded the case to the local land office, directing that the State of Utah be permitted to produce further proof, and permitting Braffet as the "contestant" to continue as such against the claims of Utah.

It is alleged in the answer, which for the purposes of this case must be taken as true, since the case was tried on bill and answer, that subsequent to the decision of the Secretary on July 31, 1922, Braffet and the coal company filed motions for rehearing, which were denied. Braffet then petitioned the Secretary for the exercise of supervisory authority, which was denied on December 28, 1922. On that day the State of Utah, through its attorney general, executed a withdrawal and prayed for a dismissal of its protest, without prejudice, however, to the interests of the coal company, alleging that it had no beneficial interest in the land, since on or about May 14, 1902, it had issued a patent therefor to one Laura Bird, who subsequently conveyed the lands to the Pleasant Valley Coal Co.

It is further alleged in the answer that on or about August 3, 1921, the United States, through the Secretary of the Interior, issued a lease to the coal company under the leasing act of February 25, 1920 (41 Stat. 437), for certain lands adjoining and in the vicinity of section 32; and on March 2, 1923, the coal company filed with the Secretary of the Interior an application for modification of its lease so as to include therein all of section 32, offering therein to waive its claim to the legal title to said land and to take a coal-land lease for the same, conditioning its waiver, however, upon the granting of the modified lease. The Secretary accordingly directed the Commissioner of the General Land Office to modify the lease of the coal company as requested, basing his action upon section 2 of the act of February 25, 1920, authorizing him in awarding coal-land leases to recognize equitable rights of persons who claim such land in good faith.

It is clear that this case must stand or fall upon the conditions existing on February 4, 1918, the date when Braffet filed his application for the purchase of the lands in question with the register of

the local land office at Salt Lake City. This application was filed under the provisions of section 2347, R. S. U. S., as follows: "Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road."

The sole question to be determined is whether or not at the date Braffet filed his application the lands in question were vacant coal lands of the United States. That they were vacant coal lands on that date is settled by the decision of the Secretary and the concession of the intervening claimants, the State of Utah and the coal company. The Secretary committed error, after finding on the original appeal that Braffet had *prima facie* established that the lands were known coal lands on the date of the grant to Utah, in holding that a presumptive title was acquired by the State of Utah through the grant, which entitled the State to rebut Braffet's prima facie case, since it is settled law that known mineral land does not pass to the State by a school land grant.

In *United States* v. *Sweet*, 245 U. S. 563, Mr. Justice Van Devanter, considering the question of whether known mineral lands passed to the State of Utah under its grant of school lands, said: "Another statute indicative of the policy of Congress and pertinent to the present inquiry is the act of February 28, 1891, c. 384, 26 Stat. 796, which defines the indemnity to which a State or Territory is entitled in respect of its school grant. In addition to dealing with deficiencies occurring in other ways, it provides, 'And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land.' In this there is a plain implication that where those sections are mineral—known to be so when the grant takes effect—they do not pass under the grant. And it does not militate against this implication that under another provision the State may surrender those sections and take other lands in lieu of them where, although not known to be mineral when the grant takes effect, they are afterwards discovered to be so."

This would seem to dispose of presumptive title or any other sort of title to known mineral land passing with the grant to the State; but in the present case we do not deem it important to consider the question of whether the presumptive title existed in the State or not. It may be suggested parenthetically that an established practice has grown up in the Land Department to the effect that where an application for the purchase of coal lands is made on school numbered sections, the applicant is given the status of a contestant with the burden upon him to establish that the lands were known coal lands at the date of the grant, the State in each instance being the contestee.

This being an established practice of the Land Department, the courts would not feel inclined by extraordinary process to disturb a construction thus placed upon the land law and consistently adhered to by the department through a long period of time and upon the faith of which vested rights have been acquired and large expenditures made.

But that rule has no application here, since the contestee, the State, after being given an opportunity to produce testimony to defeat Braffet's prima facie case voluntarily withdrew from the contest, thus surrendering any rights it may have had thereunder as contestee.

This leaves the case, however, subject to another rule of practice recognized by the department in cases where the application for entry or purchase is subject to contest. After a citizen has submitted required proof of compliance with the public land law and his entry has been placed of record he is vested with a presumptive title to the land—a title such as precludes allowance of any other claim so long as his entry remains intact. The title of the entryman is not absolute, however, but it is still subject to investigation and scrutiny, and if found for any reason to be invalid it is liable to cancellation. But cancellation can not emanate from thin air. It must rest upon a valid foundation, since the very existence of the entry segregates the land from the mass of the public domain, and a lawful reason must exist before an entryman can be deprived of his right.

Thus it will be observed that by the rule of practice established in the department, and indeed by the law as announced by the courts in many cases, the moment that Braffet's application for purchase was placed of record in the local land office he acquired an interest that could not be divested in favor of any other claim so long as his entry remained intact. It was in that condition when the Secretary ordered the case remanded to the local land office. Hence it appears that under that theory of the case the State and the coal company by their failure to further contest Braffet's claim removed the only obstacle to the allowance of his application. By his submission of prima facie proof to the satisfaction of the Land Department that the lands were known coal land at the date of the grant to the State and the failure of the State to rebut that proof his application became complete, and upon payment of the price he is entitled to a patent.

But it is sought to sustain this case on the lease subsequently executed to the coal company, on the theory that under section 2 of the leasing act, after stating the conditions under which the Secretary may lease mineral lands, the act provides: "That the Secretary is hereby authorized, in awarding leases for coal lands heretofore improved and occupied or claimed in good faith, to consider and recognize equitable rights of such occupants or claimants."

The only right which the coal company could assert on the date that Braffet applied to purchase was through its alleged title derived from the State of Utah. If Utah had no title, equitable or legal, it is difficult to understand where any equitable or legal right existed in the coal company; neither was such equitable right created by the surrender of its claims to the United States as a condition for the execution of the lease. The Secretary of the Interior has no power to barter leases in this way; nor could the rights of Braffet, which had become vested by the abandonment of the contest by the State and the coal company, be defeated in this manner.

The above provision of the leasing act, however, applies only to contesting applicants for a lease. Braffet was not an applicant for a lease, but was relying upon his right acquired long prior to the passage of the leasing act. With this valid right existing, no power inhered in the Secretary to lease the lands to anybody or under any conditions. Therefore, the provision of the act in question has no application whatever to this case.

This disposes of the further assignment of error to the effect that the coal company is an indispensable party to this suit. The coal company acquired no rights either through the State of Utah or through its lease that could in any way impair the right of Braffet acquired through the filing of his application to purchase. His case in the department and here must stand or fall upon the validity of that application. If the lands in question were vacant coal lands of the United States when the application was filed, then Braffet's right to complete his purchase can not be assailed. That the lands were vacant coal lands has been determined by the decision of the Secretary in the original appeal, 49 L. D. 212, as follows: "From a careful consideration of the evidence the department finds that the coal applicant has established *prima facie* that the land was known coal land on January 4, 1896; that the commissioner's finding in this respect was correct; and that the register and receiver erred in sustaining the motion to dismiss." The finality of the decision was accepted by the State not only by its refusal to submit further proof as to the character of the lands at the date of the grant, but by its withdrawal from the case and surrender of all title or interest in the lands. The coal company likewise recognized its finality by surrendering its alleged title in the lands to the United States and accepting in lieu thereof the lease. As before suggested, however, the coal company, which relied solely upon its title through deraignment from the State, is in no better position than its alleged grantor, and Braffet's rights can not be divested by the makeshift of the lease.

It may be suggested, however, that the position here assumed by the Secretary and the coal company is highly inconsistent, since as a condition precedent to the execution of any sort of a pretended lease the Secretary must have relied upon his finding that the lands were known coal lands on the date of the grant to the State, and upon the further admission of that fact by the coal company. This concession by both parties to the lease, based upon the final judgment of the Secretary in the original appeal, gave the lands the status of vacant coal lands on the date Braffet filed his application to purchase.

Nor is the assignment of error to the effect that the United States is an indispensable party to this suit well founded. What is here sought to be accomplished is to compel the Secretary to perform the mere ministerial act of recognizing the validity of Braffet's application and permitting him, or in this case his administrator, to complete the purchase and to issue a patent therefor.

It is sought to make the United States an indispensable party through the injection into this case of the lease with the coal company. The lease and the leasing act have nothing whatever to do with this case. The rights of Braffet were recognized by the acceptance and record of the application in the local land office and became established by the decision of the Secretary in the original

appeal, and the abandonment of the contest by the State of Utah. The proceedings following that by the Secretary had no effect whatever upon the rights already acquired by Braffet.

The decree entered herein, among other things, enjoins the Secretary "to vacate and set aside the decision of the Department of the Interior of July 31, 1922, referred to in the amended bill of complaint, and in all respects to affirm the prior decision of the Commissioner of the General Land Office." This portion of the decree, if essential in this case, would be beyond the jurisdiction of the court, as it would amount to the control by extraordinary remedy of the discretion of the Secretary in a matter in which he was compelled by law to act. But for the reasons we have set forth in this opinion, the portion of the decision of the Secretary finding that Braffet's proof established that the lands in question were known coal lands on the date of the grant to the State, and the subsequent failure of the State to further contest the case, made that finding final; and in that respect, which is the only material part for the purposes of this case, the decision of the Commissioner of the General Land Office was affirmed.

We therefore direct the modification of the decree below to a degree enjoining the Secretary to recognize the application as valid, to permit the administrator of Braffet to complete the purchase, and to cause to be issued to him a patent for said lands.

The decree is reversed without costs and the cause is remanded for modification of the decree in accordance with the views expressed herein.

MONDAY, APRIL 4, A. D. 1927.

Hubert Work, as Secretary of the Interior, appellant, *v.* Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased. No. 4528, April term, 1927.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered, adjudged and decreed by this court that the decree of the said supreme court in this cause be and the same is hereby reversed without costs, and that this cause be and the same is hereby remanded to the said supreme court for modification of the decree in accordance with the views expressed in the opinion of this court.

Per MR. JUSTICE VAN ORSDEL.

APRIL 4, 1927.

In the Court of Appeals of the District of Columbia. Hubert Work, Secretary of the Interior, appellant, *v.* Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased. No. 4528.

MOTION TO STAY MANDATE

On the 20th day of April, 1927, comes into open court Hubert Work, Secretary of the Interior, by his counsel of record, O. R. Graves, and advises the court that an application will be made

the Supreme Court of the United States, in due course, praying that said court direct to this court its writ of certiorari requiring the transmission thereto of the record herein for review:

Wherefore appellant prays that this court stay the issuance of its mandate herein for a period of three months from April 4, 1927, the date this court rendered its opinion.

O. H. GRAVES,
Assistant to the Solicitor.

_____ _____,
Attorney for Appellant.

CC mailed to Edmund Burke, communicated by phone with Mr. Rourke, of counsel. No objection made.

(Indorsed:) No. 4528. Hubert Work, &c., appellant, *v.* Robert I. Braffet, administrator, &c. Motion to stay mandate. Court of Appeals, District of Columbia. Filed April 20, 1927. Henry W. Hodges, clerk.

SATURDAY, APRIL 23, A. D. 1927.

Hubert Work, as Secretary of the Interior, appellant, *v.* Robert I. Braffet, administrator, &c. No. 4528

On consideration of the motion to stay the mandate for three months in the above-entitled cause pending application for certiorari, it is ordered by the court that said motion be and the same is hereby granted.

SATURDAY, APRIL 30, A. D. 1927.

Hubert Work, as Secretary of the Interior, appellant, *v.* Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased. No. 4528

It is ordered by the court that the order of April 23, 1927, staying the mandate in the above-entitled cause be, and the same is hereby, amended so as to stay the mandate until further order.

In the Court of Appeals of the District of Columbia. Hubert Work, as Secretary of the Interior, appellant, *v.* Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased. No. 4528

DESIGNATION OF RECORD

The clerk in the preparation of the transcript of the record on petition for certiorari to the Supreme Court of the United States in the above-entitled cause will include therein the following papers and proceedings, to wit:

1. Record.
2. Suggestion of death of party Braffet and appointment of administrator.

3. Submission of cause.
4. Opinion of the court.
5. Decree.
6. Motion to stay mandate.
7. Order granting motion to stay mandate.
8. Order of April 30 amending motion to stay mandate.
9. This designation.

O. H. GRAVES,
Attorney for Appellant.

(Indorsed:) No. 4528. Hubert Work, Secretary, appellant, *v.* Robert I. Braffet, etc. Designation of record on certiorari. Court of Appeals, District of Columbia, filed Jun. 24, 1927. Henry W. Hodges, clerk.

Court of Appeals of the District of Columbia

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 26, inclusive, constitute a true copy of the transcript of record and proceedings of said court of appeals, per designation of counsel, in the case of Hubert Work, as Secretary of the Interior, appellant, *v.* Robert I. Braffet, administrator of the estate of Mark P. Braffet, deceased, No. 4528, April term, 1927, as the same remain upon the files and records of said court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said court of appeals, at the city of Washington, this 24th day of June, A. D. 1927.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

U. S. GOVERNMENT PRINTING OFFICE: 19